

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1046 OF 2005

Vijaykumar G. Patil

...Petitioner.

Versus

Arvindkumar G. Patil & Ors.

...Respondents.

Shri K.S.Bapat for the Petitioner.

None for the Respondents.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 8th FEBRUARY, 2006.

P.C. :

1. Heard Shri Bapat - learned Counsel appearing for the petitioner. None appears for the respondents and Shri Bapat, in all fairness, seeks time to serve them.

2. In my view, considering the nature of the controversy and more particularly because no order is being passed against the respondents, their presence is not necessary.

3. The lower Appellate Court in the impugned order has recorded that the petitioner-plaintiff has not placed before the trial Court material facts pertaining to the relief of temporary injunction sought in Regular Civil Suit No.48 of 2001. The lower Appellate Court has observed that considering the mortgage deed which

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is reflected in the partition deed as well as the pleas
of the petitioner-orig.plaintiff, he is not entitled to
an injunction in respect of the entire suit land. It
is recorded by the lower Appellate Court that entire
land bearing Gat No.920 and Northern portion of land
Gat No.957 is mortgaged with the original defendant
No.2. The plaintiffs are not entitled to get the
relief of injunction with respect to this land.

4. However, Shri Bapat invites my attention to an
order passed by the trial Court as also the submissions
made before the lower Appellate Court to the effect
that execution of the mortgage deed would not in any
manner affect the right of the plaintiff to continue in
possession of the Southern portion admeasuring 0.49 R
in Gat No.957. He points out that the Trial Court has
observed that the said land is in possession of
defendant No.1 as 'Karta'. Shri Bapat submits that in
these circumstances, the application for temporary
injunction could have been granted in part and the
lower Appellate Court has erred in reversing the
judgment of the trial Court and allowing the Appeal.

5. In my view, it is not necessary to scrutinise
legality and validity of the impugned order and
adjudicate upon the submissions of Shri Bapat. In my
view, interest of justice would be served if the
petitioner-plaintiff is granted liberty to apply to the

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trial Court to protect the right of the petitioner-plaintiff, if any, in the portion referred to above and upon materials produced, it would be for the trial Court to pass appropriate orders either protecting the petitioner's possession or issuing a restraint order against defendant No.1 with a view, to protect the right of parties, to a Suit filed for enforcement of the partition deed. The order passed by the lower Appellate Court would not in any manner prevent the petitioner-plaintiff from applying for this relief and in case the trial Court upon hearing parties and perusing materials is satisfied that an appropriate interlocutory order needs to be made, the same can be made by the trial Court despite rejection of this Petition and allowing of the Appeal preferred by the original defendants.

6. The petitioner is at liberty to make application and claim reliefs in terms aforesaid. The trial Court to consider such application in the light of the order passed by the lower Appellate Court and after hearing the parties pass such interlocutory orders as are permissible in law. In any event, the trial Court should endeavour to dispose of the subject Suit as expeditiously as possible.

(S.C.DHARMADHIKARI,J.)